No. 14-5297

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

VALERIA TANCO and SOPHY JESTY, et al.,
Plaintiffs-Appellees,

v.

WILLIAM HASLAM, Governor of the State of Tennessee, et al.,
Defendants-Appellants.

On Appeal from the United States District Court
For the Middle District of Tennessee

BRIEF OF DEFENDANTS-APPELLANTS

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DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTERESTS

Pursuant to 6th Cir. R. 26.1, Defendants-Appellees, William Haslam, Governor of the State of Tennessee, Larry Martin, Commissioner of the Department of Finance and Administration, and Robert E. Cooper, Jr., Attorney General of the State of Tennessee, in their official capacities, make the following disclosure:

1. Are said parties subsidiaries or affiliates of a publicly-owned corporation? If the answer is YES, list below the identity of the parent corporation or affiliate and the relationship between it and the named parties:

   No.

2. Is there a publicly-owned corporation not a party to the appeal that has a financial interest in the outcome? If the answer is YES, list the identity of such corporation and the nature of the financial interest:

   No.

/s/ Martha A. Campbell
MARTHA A. CAMPBELL

May 7, 2014
Date

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JURISDICTION AND TIMELINESS OF APPEAL

Subject-matter jurisdiction was conferred upon the United States District Court by 28 U.S.C. § 1331 and § 1343(a)(3). Specifically, Plaintiffs-Appellees, who are same-sex couples married outside of Tennessee, alleged pursuant to 42 U.S.C. § 1983 that Tenn. Code Ann. § 36-3-113 and Tenn. Const. art XI, § 18, (collectively "Tennessee's Marriage Laws") violate their civil rights under the Due Process Clause, Equal Protection Clause, and the Privileges and Immunities Clause of the Fourteenth Amendment to the United States Constitution.

Subject-matter jurisdiction is conferred upon this Court by 28 U.S.C. § 1292(a), as Defendants-Appellants seek review of the District Court's order granting the Plaintiffs-Appellees' Motion for Preliminary Injunction.

Defendants-Appellants gave timely notice of appeal pursuant to Fed. R. App. P. 4(b). The District Court granted the Motion for Preliminary Injunction on March 14, 2014. (RE # 67, 68, and 69, Memorandum, Order, and Preliminary Injunction). Defendants-Appellants filed their Notice of Appeal on March 17, 2014. (RE # 74, Notice of Appeal).

STATEMENT REGARDING ORAL ARGUMENT

The issue presented for review involves the validity of a State constitutional provision and a State statute. It is an important issue for the State of Tennessee and one of first impression for this Court. Defendants-Appellants respectfully submit that the case warrants oral argument.

ISSUE PRESENTED FOR REVIEW

Tennessee's Marriage Laws embrace the traditional definition of marriage—the legal contract solemnizing the relationship of one man and one woman—and do not recognize out-of-state marriages of same-sex couples as valid in the State of Tennessee. Did the District Court err in granting a preliminary injunction to Plaintiffs, three same-sex couples who married in other states, requiring the State of Tennessee to recognize their out-of-state marriages?

STATEMENT OF THE CASE

Tennessee statutes regulating marriage are set forth in Chapter 3 of Title 36 of the Tennessee Code. *See generally* Tenn. Code Ann. §§ 36-3-101 to -505. Plaintiffs' claims concern two separate Tennessee laws defining marriage. The first, Tenn. Code Ann. § 36-3-113, enacted in 1996, states:

> (a) Tennessee's marriage licensing laws reinforce, carry forward, and make explicit the long-standing public policy of this state to recognize the family as essential to social and economic order and the common good and as the fundamental building block of our society. To that end, it is further the public policy of this state that the historical institution and legal contract solemnizing the relationship of one (1) man and one (1) woman shall be the only legally recognized marital contract in this state in order to provide the unique and exclusive rights and privileges to marriage.
>
> (b) The legal union in matrimony of only one (1) man and one (1) woman shall be the only recognized marriage in this state.
>
> (c) Any policy, law or judicial interpretation that purports to define marriage as anything other than the historical institution and legal contract between one (1) man and one (1) woman is contrary to the public policy of Tennessee.
>
> (d) If another state or foreign jurisdiction issues a license for persons to marry, which marriages are prohibited in this state, any such marriage shall be void and unenforceable in this state.

In 2006, Tennessee voters adopted an amendment to the Tennessee Constitution also defining marriage:

> The historical institution and legal contract solemnizing the relationship of one (1) man and one (1) woman shall be the only legally recognized marital contract in this state. Any policy or law or judicial interpretation, purporting to define marriage as anything other

> than the historical institution and legal contract between one (1) man and one (1) woman, is contrary to the public policy of this state and shall be void and unenforceable in Tennessee. If another state or foreign jurisdiction issues a license for persons to marry and if such marriage is prohibited in this state by the provisions of this section, then the marriage shall be void and unenforceable in this state.

Tenn. Const. art. XI, § 18. These two laws will be collectively referred to here as "Tennessee's Marriage Laws."

On October 21, 2013, Plaintiffs filed a Complaint for Declaratory and Injunctive Relief in the United States District Court for the Middle District of Tennessee. (RE # 1, Complaint). The complaint challenged the constitutionality of Tennessee's Marriage Laws, alleging that they violated Plaintiffs' rights to due process, equal protection, and the right to travel under the Fourteenth Amendment to the United States Constitution.

Plaintiffs are three married same-sex couples who moved to Tennessee after they were legally married in other states. (RE # 1, p. 2, Complaint).[1] After residing in Tennessee for more than a year after their marriages, the couples filed their complaint for declaratory and injunctive relief against Tennessee state officials—the Governor, the Commissioner of the Department of Finance and Administration,

[1] There were originally four same-sex couples who filed the action; however, Plaintiffs Kellie Miller and Vanessa DeVillez withdrew, and the parties jointly stipulated to their dismissal under Fed. R. Civ. P. 41(a)(1)(A)(ii). (RE # 59, Stipulation of Dismissal).

and the Attorney General—to prevent the enforcement of Tennessee's Marriage Laws. (*Id.*)[2]

Following the complaint, Plaintiffs moved for a preliminary injunction, arguing *inter alia* that Tennessee's Marriage Laws deny them due process and equal protection of the laws and violate their right to interstate travel, and that Tennessee's Marriage Laws should be subject to heightened scrutiny on the basis of sexual orientation and gender. (RE # 29, pp. 1–3, Motion for Preliminary Injunction; RE # 30, pp. 18–43, Plaintiffs' Memorandum of Law in Support of Motion for Preliminary Injunction). Plaintiffs further argued that they would suffer irreparable harm in the absence of an injunction because Tennessee's Marriage Laws violated their constitutional rights, stigmatized them and their children, and deprived them of state-law protections for married couples. (RE # 30, pp. 43–45, Plaintiffs' Memorandum of Law in Support of Motion for Preliminary Injunction). Plaintiffs conceded in their motion for preliminary injunction that they had alternative options to the state-law protections for married couples. (RE # 32-1, at ¶ 11, Declaration of Valeria Tanco; RE # 32-2, at ¶ 11, Declaration of Sophy Jesty; RE 32-8, at ¶ 11, Declaration of Ijpe Dekoe; RE # 32-9, at ¶ 11, Declaration of

[2] An additional defendant, the Commissioner of the Tennessee Department of Safety and Homeland Security, was dismissed from the action when Plaintiffs Miller and DeVillez entered their stipulation of dismissal. (RE # 59, Stipulation of Dismissal).

Thomas Kostura; RE # 32-15, at ¶ 11, Declaration of Johno Espejo; and RE # 32-16, at ¶ 11, Declaration of Matthew Mansell).

Defendants countered, arguing that Tennessee's Marriage Laws were constitutional, that Plaintiffs' claims were untimely because they had moved to Tennessee more than one year before filing the lawsuit,[3] and that reputational injury is insufficient to support injunctive relief. (RE # 35, pp. 4–24, Defendants' Response in Opposition to Plaintiffs' Motion for Preliminary Injunction).

On March 14, 2014, the District Court granted Plaintiffs' motion for preliminary injunction, barring Defendants from enforcing Tennessee's Marriage Laws. (RE # 67, Memorandum; RE # 68, Order; RE # 69, Preliminary Injunction). The injunction was limited to the six remaining plaintiffs in the lawsuit. (RE # 67, pp. 3-4, Memorandum). Defendants filed their Notice of Appeal on March 17, 2014. (RE # 74, Notice of Appeal).

The District Court denied Defendants' Motion to Stay the Preliminary Injunction on March 20, 2014 (RE # 78, Memorandum & Order). On April 25, 2014, this Court granted Defendants' Motion to Stay the Preliminary Injunction pending review of the merits of the appeal by this Court. (Doc. # 29-1, Order).

[3] Defendants do not address in this brief whether the Plaintiffs' complaint was filed within the applicable statute of limitations. However, Defendants do not waive this argument, as set out in their response in opposition to the motion for preliminary injunction. (RE # 35, pp. 19-21, Defendants' Response in Opposition to Plaintiffs' Motion for Preliminary Injunction).

SUMMARY OF THE ARGUMENT

Plaintiffs are same-sex couples who were lawfully married in the States of New York and California and have since moved to Tennessee. They sought, and the District Court granted, a preliminary injunction requiring the State of Tennessee to recognize their out-of-state marriages despite a State constitutional amendment and a State statute to the contrary.

Plaintiffs' claims amount to the contention that in an area of law exclusively reserved to the separate States, and on an issue that "is currently a matter of great debate" and over which "people of good will may disagree, sometimes strongly,"[4] a minority of States may set national policy for the entire country. But they may not. In the midst of this ongoing debate over same-sex marriage, it is one thing to say that an individual State *should* recognize same-sex marriage; it is quite another thing to say that an individual State *must* recognize same-sex marriage.

Based almost entirely upon the "rising tide" of district-court rulings rendered in the wake of the United States Supreme Court's decision in *United States v. Windsor*, 133 S.Ct. 2675 (2013), the District Court determined that Tennessee's Marriage Laws are likely unconstitutional—without performing its own constitutional analysis. (RE # 67, pp. 11-14, Memorandum). Such an analysis

[4] *Perry v. Brown*, 671 F.3d 1052, 1064 (9th Cir. 2012), *vacated and remanded, Hollingsworth v. Perry*, 133 S.Ct. 2652 (2013).

shows that Tennessee's Marriage Laws do not violate due process and do not violate equal protection. *Windsor* supports this conclusion; it *does not* support the Plaintiffs' arguments or the District Court's determination that Plaintiffs are likely to succeed on those arguments. And, contrary to the district-court decisions on which the District Court here relied, Tennessee's Marriage Laws *have* a rational basis.

As the District Court's merits determination influenced its conclusions on the other three factors for awarding preliminary injunctive relief, the District Court's order enjoining the State of Tennessee from enforcing its marriage laws constituted an abuse of discretion. The District Court improperly assumed that Tennessee's Marriage Laws would be unconstitutional, erroneously characterized the harm alleged by Plaintiffs as imminent and irreparable, and disregarded the harm to the State and the public interest that would flow from preventing the State from enforcing a democratically enacted law. The District Court's order should therefore be reversed.

ARGUMENT

This appeal arises from a motion for preliminary injunction granted by the District Court. Four factors must be considered by the district court in making a determination regarding preliminary injunctive relief: "'(1) the likelihood that the party seeking the preliminary injunction will succeed on the merits of the claim;

(2) whether the party seeking the injunction will suffer irreparable harm without the grant of the extraordinary relief; (3) the probability that granting the injunction will cause substantial harm to others; and (4) whether the public interest is advanced by the issuance of the injunction.'" *United States v. Edward Rose & Sons.*, 384 F.3d 258, 261 (6th Cir. 2004) (quoting *Washington v. Reno*, 35 F.3d 1093, 1099 (6th Cir. 1994)).

This Court typically reviews district-court preliminary-injunction orders for an abuse of discretion. *Hamilton's Bogarts, Inc. v. Michigan*, 501 F.3d 644, 649 (6th Cir. 2007) (citing *Nightclubs, Inc. v. City of Paducah*, 202 F.3d 884, 888 (6th Cir. 2000)). Using this standard, the district court's decision may be disturbed only where the court "'relied upon clearly erroneous findings of fact, improperly applied the governing law, or used an erroneous legal standard.'" *Id.* (quoting *Connection Distrib. Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998)).

But "[w]hen a party seeks a preliminary injunction on the basis of a potential constitutional violation, 'the likelihood of success on the merits often will be the determinative factor.'" *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) (quoting *Jones v. Caruso*, 569 F.3d 258, 265 (6th Cir. 2009)). *See Certified Restoration Dry Cleaning Network, L.L.C. v. Tenke Corp.*, 511 F.3d 535, 541 (6th Cir. 2007) ("The district court's determination of whether the movant is likely to succeed on the merits is a question of law and is accordingly reviewed *de novo*.").

Here, the principal issue concerns the constitutionality of Tennessee's Marriage Laws. Accordingly, this Court's review of the district court's ruling on the likelihood of success is *de novo*. *Jones v. City of Monroe*, 341 F.3d 474, 476 (6th Cir. 2003).

Because a preliminary injunction is an extraordinary remedy, "the proof required for the plaintiff to obtain a preliminary injunction is much more stringent than the proof required to survive a summary judgment motion." *McNeilly v. Land*, 684 F.3d 611, 615 (6th Cir. 2012) (quoting *Leary v. Daeschner*, 228 F.3d 729, 739 (6th Cir. 2000). The moving party bears the burden of justifying such extraordinary relief, "including showing irreparable harm and likelihood of success." *McNeilly*, 684 F.3d at 615 (citing *Granny Goose Foods, Inc. v. Teamsters*, 415 U.S. 423, 441 (1974)).

I. THE DISTRICT COURT ERRED IN FINDING THAT PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS.

In concluding that Plaintiffs are likely to succeed on the merits of their challenge to Tennessee's Marriage Laws, the District Court relied upon an overly broad reading of *United States v. Windsor*, 133 S.Ct. 2675 (2013), and on various district-court decisions[5] from other jurisdictions. (RE # 67, pp. 11-13). Although the District Court asserted that "it is no leap" to conclude that Plaintiffs are likely

[5] These district court decisions have yet to be reviewed by any federal appellate court.

to succeed in challenging Tennessee's Marriage Laws, the Court reached that conclusion without performing any constitutional analysis of its own and without determining for itself whether a rational basis exists for Tennessee's Marriage Laws. (RE # 67, p. 13, Memorandum).

Tennessee's Marriage Laws do not violate Plaintiffs' constitutional rights to due process and equal protection, nor does *Windsor* create a right to same-sex marriage or a basis upon which to invalidate Tennessee's law. The District Court therefore erred in its determination that Plaintiffs had demonstrated a likelihood of success on the merits.

A. Tennessee's Marriage Laws Do Not Violate Due Process.[6]

Plaintiffs argued in support of their bid for preliminary injunctive relief that "[Tennessee's Marriage Laws] violate due process because they impermissibly deprive Plaintiffs of a protected liberty interest in their existing marriages." (RE # 30, p. 11, Plaintiffs' Memorandum in Support of Motion for Preliminary Injunction). The Due Process Clause of the United States Constitution provides

[6] The cases relied upon by the District Court concern due-process and equal-protection rights. Plaintiffs also raised in their complaint the constitutional right to travel. As the District Court and the decisions upon which it relied do not address the right to travel, it will not be addressed here. Likewise, although the District Court concluded that Plaintiffs "are likely to succeed on the merits of their equal-protection challenge" (RE # 67, p. 14, Memorandum), the court made reference in its order to Plaintiffs' due-process argument as well, including "the animating principles in *Windsor*." (RE # 67, p. 14, Memorandum). Accordingly, each will be addressed here.

that no State shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend XIV. Defendants agree that this clause "guarantees more than fair process," *Washington v. Glucksberg*, 521 U.S. 702, 719 (1997); it also includes a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests"—but only "those fundamental rights and liberties which are, objectively, 'deeply rooted in this Nation's history and tradition . . . and implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed.'" *Id*. at 720-21 (citations omitted). "Our Nation's history, legal traditions, and practices thus provide the crucial 'guideposts for responsible decisionmaking'. . . that direct and restrain our exposition of the Due Process Clause." *Id*. at 721 (citations omitted). The Supreme Court has been reluctant to expand this concept of substantive due process:

> By extending constitutional protection to an asserted right or liberty interest, we, to a great extent, place the matter outside the arena of public debate and legislative action. We must therefore "exercise the utmost care whenever we are asked to break new ground in this field," lest the liberty protected by the Due Process clause be subtly transformed into the policy preferences of the Members of this Court.

Glucksberg, 521 U.S. at 720 (citations omitted). *See Does II & III v. Munoz*, 507 F.3d 961, 964 (6th Cir. 2007) ("identifying a new fundamental right subject to the protections of substantive due process is often an 'uphill battle,' . . . as the list of fundamental rights 'is short.'").

Plaintiffs expressly disavowed, for purposes of their motion for preliminary injunctive relief, reliance on any fundamental right to same-sex marriage,[7] and with good reason: There *is no* fundamental right to same-sex marriage. *See Baker v. Nelson*, 409 U.S. 810 (1972) (rejecting, by dismissal of appeal for lack of a federal question, claim that there exists a fundamental constitutional right to same-sex marriage);[8] *see also Jackson v. Abercrombie*, 884 F. Supp. 2d 1065, 1095 (D. Haw. 2012) (noting that "Supreme Court cases involving the fundamental right to marry all involved opposite-sex couples"). Plaintiffs instead asserted, relying on *Windsor*, that they have a protected liberty interest in their *existing marital relationships* and that Tennessee's Marriage Laws deprive them of that interest. The District Court agreed. (RE # 67, pp. 11-13, Memorandum). But this reliance on *Windsor* was misplaced.

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[7] (*See* RE # 30, p. 24 n.6, Plaintiffs' Memorandum in Support of Motion for Preliminary Injunction) ("This motion does not require the Court to decide whether state laws barring same-sex couples from marrying infringe upon Plaintiffs' fundamental rights to marry the person of their choice. . . . Although Plaintiffs contend that the Constitution does require that states grant same-sex couples the freedom to marry, . . . the Court need not reach that issue to grant the preliminary relief requested in this motion.").

[8] Recent federal-district-court decisions addressing constitutional challenges to state marriage laws have concluded that *Baker* remains binding. *See Jackson v. Abercrombie*, 884 F.Supp.2d 1065, 1086-87 (D. Haw. 2012); *Sevcik v. Sandoval*, 911 F.Supp.2d 996, 1002-03 (D. Nev. 2012); *see also Citizens for Equal Protection v. Bruning*, 455 F.3d 859, 870-71 (8th Cir. 2006); *Walker v. Mississippi*, No. 3:04-cv-140 LS, 2006 U.S. Dist. LEXIS 98320, at *4 (S.D. Miss. July 25, 2006); *Wilson v. Ake*, 354 F.Supp.2d 1298, 1304-05 (M.D. Fla. 2005).

In *Windsor*, the Supreme Court held invalid Section 3 of the *federal* Defense of Marriage Act (DOMA), not because the recognition of same-sex marriages is required by the Federal Constitution but because the *federal* government lacks authority to discriminate between opposite-sex and same-sex marriages when both are recognized under a particular state's law. *See id.* at 2694 ("By creating two contradictory marriage regimes within the same State, DOMA forces same-sex couples to live as married for the purposes of state law but unmarried for the purpose of federal law."); *see also* 133 S.Ct. at 2692 ("What the State of New York treats as alike the federal law deems unlike. . . ."). But the situation is far different where, as here, one State's laws allow same-sex marriage and another State's laws do not. *See id.* at 2692 ("DOMA rejects the long-established precept that the incidents, benefits, and obligations of marriage are uniform for all married couples within each State, though *they may vary, subject to constitutional guarantees, from one State to the next.*") (emphasis added).[9]

[9] Section 2 of DOMA, which was not at issue in *Windsor*, expressly allows States to decline to recognize same-sex marriages performed under the laws of other States. *See* 28 U.S.C. § 1738C; *see also Wilson v. Ake*, 354 F.Supp.2d 1298 (M.D. Fla. 2005) (holding that Section 2 of DOMA did not violate the Full Faith and Credit Clause, was an appropriate exercise of Congress' power to regulate conflicts between the laws of different States because ruling otherwise could create license for a single State to create national policy, and did not violate due-process or equal-protection principles).

As the Court observed in *Windsor*, the "regulation of domestic relations is an area that has been regarded as a virtually exclusive province of the States," and "[t]he definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the 'protection of offspring, property interests, and the enforcement of marital responsibilities.'" *Id.* at 2691. Indeed, the State's exclusive authority to define the marital relation was "of central relevance" in *Windsor*, *id.* at 2692; *see also id.* at 2693 ("The responsibility of the States for the regulation of domestic relations is an important indicator of the substantial societal impact the State's classifications have in the daily lives and customs of its people."); it was the *federal* government's "depart[ure] from this history and tradition of reliance on state law to define marriage" that gave rise to the deprivation that the Court held to be unconstitutional. *Id.* at 2692.

The States of New York and California have decided to allow same-sex marriages, and "[t]hese actions were without doubt a proper exercise of [their] sovereign authority within our federal system." *Windsor*, 133 S.Ct. at 2692. But Tennessee's decision *not* to recognize same-sex marriages was just as proper an exercise of its own sovereign authority to regulate domestic relations and to define marriage. *See Shelby Cnty. v. Holder*, 133 S.Ct. 2612, 2623 (2013) ("Not only do States retain sovereignty under the Constitution, there is also a 'fundamental

principle of *equal* sovereignty' among the States.") (quoting *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 203 (2009)) (emphasis in original). Whatever protected interest Plaintiffs may have in their existing marriages exists solely by virtue of the laws of New York and California and is limited to those States.[10] Tennessee's Marriage Laws do not "creat[e] two contradictory marriage regimes *within the same State*," *id.*, 133 S.Ct. at 2694 (emphasis added), and thus do not violate due process.

B. Tennessee's Marriage Laws Do Not Deny Equal Protection.

The Equal Protection Clause of the United States Constitution "prohibits discrimination by government which either burdens a fundamental right, targets a suspect class, or intentionally treats one differently than others similarly situated without any rational basis for the difference." *Rondigo, L.L.C., v. Twp. of Richmond*, 641 F.3d 673, 681-82 (6th Cir. 2011). Because Tennessee's Marriage Laws do none of these things, they do not deny equal protection.

1. Plaintiffs' Equal-Protection Claims Will Fail Because Tennessee's Marriage Laws Do Not Discriminate Against Plaintiffs.

The fundamental premise of Plaintiffs' equal-protection claim (indeed, of all their claims) is that "[Tennessee's Marriage Laws] target same-sex couples, and

[10] "The dynamics of state government in our federal system are to allow the formation of consensus respecting the way the members of a *discrete community* treat each other in their daily contact and constant interaction with each other." *Windsor*, 133 S.Ct. at 2692 (emphasis added).

only those couples, for denial of recognition of their otherwise valid out-of-state marriages." (RE # 30, p. 37; *see id.* at 18, Plaintiffs' Memorandum in Support of Motion for Preliminary Injunction). But this assertion is incorrect. The plain language of Tennessee's Marriage Laws clearly states that Plaintiffs' marriages are but one of many types of marriages not recognized by the State. *See* Tenn. Code Ann. § 36-3-113(d) ("If another state or foreign jurisdiction issues a license for persons to marry, which marriages are prohibited in this state, *any such marriage* shall be void and unenforceable.") (emphasis added). Included in that group, to be sure, are same-sex marriages, but also included are other marriages that Tennessee law prohibits. *See* Tenn. Code Ann. §§ 36-3-101 & -102. *See also* Tenn. Const. art. XI, § 18; Tenn. Code Ann. § 36-3-113(b) (recognizing only the union of *one* man and *one* woman as marriage).

Plaintiffs are not treated any differently by Tennessee's Marriage Laws than their peers in the similarly situated class of persons whose marriages are prohibited within Tennessee, so Plaintiffs' comparison to *all* opposite-sex couples married out of state is inapt. Out-of-state same-sex marriages are not singled out for different treatment. Tennessee's Marriage Laws treat out-of-state same-sex marriages exactly the same as any other out-of-state marriage that is prohibited in Tennessee.

Plaintiffs have posited that "Tennessee courts have, almost without exception, held that marriages validly entered into in other jurisdictions will be

honored in Tennessee—even if the couple would not have satisfied the statutory requirements to obtain a license to marry in Tennessee." (RE # 30, pp. 19-20, Plaintiffs' Memorandum in Support of Motion for Preliminary Injunction). Plaintiffs relied for this proposition on *Shelby County v. Williams*, 510 S.W.2d 73, 74 (Tenn. 1974); *In re Estate of Glover*, 882 S.W.2d 789, 789-90 (Tenn. Ct. App. 1994); *Lightsey v. Lightsey*, 407 S.W.2d 684, 690 (Tenn. Ct. App. 1966); *Keith v. Pack*, 187 S.W.2d 618, 619 (Tenn. 1945); and *Farnham v. Farnham*, 323 S.W.3d 129 (Tenn. Ct. App. 2009). But all of these cases, except *Farnham*, were decided prior to the 1996 enactment of Tenn. Code Ann. § 36-3-113 and are therefore inapposite. And *Farnham* was decided without addressing § 36-3-113.[11]

Accordingly, because Plaintiffs cannot demonstrate that they are suffering disparate treatment from the similarly situated class of persons with out-of-state marriages that are not recognized under Tennessee's Marriage Laws, their equal-protection claims will fail.

2. Plaintiffs' Equal-Protection Claims Will Fail In Any Event Because Tennessee's Marriage Laws Satisfy the Rational-Basis Test.

Even if it were correct for Plaintiffs to compare themselves to opposite-sex couples with out-of-state marriages that *are* recognized in Tennessee, and even if the constitutionality of Tennessee's Marriage Laws ultimately depends upon the

[11] *Farnham* was decided on estoppel grounds. 323 S.W.3d at 136.

constitutional validity of Tennessee's definition of marriage as the union of one man and one woman, Plaintiffs' equal-protection claims still fail. The decision of the United States Supreme Court in *Baker v. Nelson*, 409 U.S. 810 (1972), stands for the proposition that a state law limiting marriage to opposite-sex couples does not violate the Equal Protection Clause;[12] *Baker* is binding on this Court and compels the conclusion that Plaintiffs' equal-protection claims cannot succeed. *See, e.g., Jackson v. Abercrombie*, 884 F.Supp.2d 1065, 1088 (D. Haw. 2012) ("*Baker* is the last word from the Supreme Court regarding the constitutionality of a state law limiting marriage to opposite-sex couples and thus remains binding on this Court."). In any event, Plaintiffs' equal-protection claims will fail because Tennessee's Marriage Laws do not discriminate without a rational basis; the District Court erred in ruling to the contrary.[13]

[12] *Baker* so holds by virtue of the Supreme Court's dismissal, for want of a substantial federal question, of an appeal from the judgment of the Minnesota Supreme Court. Such a dismissal constitutes a disposition on the merits. *Hicks v. Miranda*, 422 U.S. 332, 344 (1975). The Minnesota Supreme Court had held in *Baker* that: "The equal protection clause of the Fourteenth Amendment . . . is not offended by a state's classification of persons authorized to marry. There is no irrational or invidious discrimination." *Baker v. Nelson*, 191 N.W.2d 185, 187 (1971).

[13] Because the District Court found a likelihood of success on the merits "even under a 'rational basis' standard of review," it stated that it "need not address at this stage" whether any heightened standard would apply. (RE 67, p. 14, Memorandum).

Under rational-basis review, a law is presumed constitutional, and "[t]he burden is on the one attacking the legislative arrangement to negate every conceivable basis which might support it." *Heller v. Doe*, 509 U.S. 312, 320 (1993) (internal quotations omitted); *see also Walker v. Bain*, 257 F.3d 660, 668 (6th Cir. 2001) (stating that a statute is subject to a "strong presumption of validity" under rational-basis review and will be upheld "if there is any reasonably conceivable state of facts that could provide a rational basis.").

A court conducting a rational-basis review does not sit "as a super legislature to judge the wisdom or desirability of legislative policy determinations" but asks only whether there is some conceivable rational basis for the challenged statute. *Heller*, 509 U.S. at 319. Under rational-basis review, it is "'constitutionally irrelevant [what] reasoning in fact underlays the legislative decision.'" *R.R. Ret. Bd. v. Fritz*, 449 U.S. 166, 179 (1980) (quoting *Flemming v. Nestor*, 363 U.S. 603, 612 (1960)). In enacting Tennessee's Marriage Laws, the General Assembly and the citizens of Tennessee had "absolutely no obligation to select the scheme" that a court might later conclude was best. *Nat'l R.R. Passenger Corp. v. A.T. & S.F.R. Co.*, 470 U.S. 451, 477 (1985). *See McGowan v. Maryland*, 366 U.S. 420, 425-426 (1961) ("State legislatures are presumed to have acted within their constitutional power despite the fact that in practice, their laws result in some inequality."). And Tennessee "has no obligation to produce

evidence to sustain the rationality of its action; its choice is presumptively valid and 'may be based on rational speculation unsupported by evidence or empirical data.'" *TriHealth, Inc. v. Bd. of Comm'rs*, 430 F.3d 783, 790 (6th Cir. 2005) (quoting *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 315 (1993)).

The presumption that a law is constitutional is even stronger with regard to laws passed by the citizens themselves at the ballot box, and the constitutional provision that is part of Tennessee's Marriage Laws was passed by an overwhelming majority.[14] *See Gregory v. Ashcroft*, 501 U.S. 452, 470-71 (1991) (applying rational-basis review and noting that the Court was "dealing not merely with government action, but with a state constitutional provision approved by the people of Missouri as a whole" and therefore the "constitutional provision reflects . . . the considered judgment . . . of the citizens of Missouri who voted for it."). In adopting the marriage amendment to the Tennessee Constitution, "[Tennessee] voters exercised their privilege to enact laws as a basic exercise of their democratic power" *Schuette v. Coal. To Defend Affirmative Action, Integration and Immigration Rights and Fight for Equal. By Any Means Necessary (BAMN)*, ___ S.Ct. ___, 2014 WL 1577512, at *15 (Apr. 22, 2014) (plurality opinion of Kennedy, J.). And "[i]t is demeaning to the democratic process to presume that the

[14] Article XI, § 18, of the Tennessee Constitution was enacted in 2006 upon the affirmative vote of approximately 80% of the voters. (RE # 37-1, Declaration of Mark Goins, Tennessee Coordinator of Elections).

voters are not capable of deciding an issue of this sensitivity on decent and rational grounds." *Id*. at *16.

The District Court seems to have turned this presumption on its head. Having decided that Tennessee's Marriage Laws were unconstitutional, based on the rulings of other district courts, the District Court concluded that "[t]he defendants have not persuaded the court that Tennessee's Anti-Recognition Laws will likely suffer a different fate than the anti-recognition laws struck down and/or enjoined in *Bourke, Obergefell*, and *DeLeon*," noting that "[d]efendants offer arguments . . . that Anti-Recognition Laws have a rational basis because they further a state's interest in procreation, which is essentially the only 'rational basis' advanced by the defendants here." (RE # 67, pp. 13-14, Memorandum). But it was not the Defendants' responsibility to prove a rational basis; "'[t]he existence of facts supporting the legislative judgment is to be presumed.'" *American Exp. Travel Related Services Co., Inc. v. Kentucky*, 641 F.3d 685, 693 (6th Cir. 2011) (quoting *United States v. Carolene Prods.*, 304 U.S. 144, 152 (1938)). The "heavy burden of 'negat[ing] every conceivable basis which might support [the enactment]" should have been placed on the Plaintiffs. *Id.* at 694 (quoting *Hadix v. Johnson*, 230 F.3d 840, 843 (6th. Cir. 2000)).

Regardless, Tennessee's Marriage Laws do have a rational basis in law and thus do not violate equal protection. "[M]arriage and procreation are fundamental

to the very existence and survival of the race." *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942); *see Zablocki v. Redhail*, 434 U.S. 374, 384 (1978) ("[Marriage] is the foundation of the family in our society."); *Maynard v. Hill*, 125 U.S. 190, 211 (1888) (Marriage "is the foundation of the family and of society, without which there would be neither civilization nor progress."). Marriage can simply not be divorced from its traditional procreative purpose. *See* Noah Webster, *An American Dictionary of the English Language* 897 (1st ed. 1828) (marriage "was instituted . . . for the purpose of preventing the promiscuous intercourse of the sexes, for promoting domestic felicity, and for securing the maintenance and education of children"); *see also Windsor*, 133 S.Ct. at 2718 (Alito, J., dissenting) ("there is no doubt that, throughout human history and across many cultures, marriage has been viewed as an exclusively opposite-sex institution and as one inextricably linked to procreation and biological kinship"). The promotion of family continuity and stability is certainly a legitimate state interest, *see Nordinger v. Hahn*, 505 U.S. 1, 13, 17 (1992), and Tennessee's Marriage Laws expressly recognize the family "as the fundamental building block of our society." Tenn. Code Ann. § 36-3-113(a).

Obviously, though, "[s]ame-sex couples cannot naturally procreate." *Jackson v. Abercrombie*, 884 F.Supp.2d 1065, 1112 (D. Haw. 2012). Biology alone, therefore, provides a rational explanation for Tennessee's decision not to extend marriage to same-sex couples. *See Citizens for Equal Protection v.*

Bruning, 455 F.3d 859, 867 (8th Cir. 2006) (holding that state constitutional amendment recognizing marriage only between a man and a woman was rational "based on a 'responsible procreation' theory that justifies conferring the inducements of marital recognition and benefits on opposite-sex couples, who can otherwise produce children by accident, but not on same-sex couples, who cannot"); *Donaldson v. State*, 292 P.3d. 364, 369 (Mont. 2012) (Rice, J., concurring) ("Beyond these reasons of family, societal stability, governance and progress, as important as they are, courts analyzing marriage have focused upon even more compelling reasons: its exclusive role in procreation and in insuring the survival, protection and thriving of the human race."); *see also Jackson*, 884 F.Supp.2d at 1113 n.36 (citing cases) ("Many courts have credited the responsible-procreation theory and held that there is a rational link between the capability of naturally conceiving children—unique to two people of opposite genders—and limiting marriage to opposite-sex couples."). [15]

[15] Accidental pregnancies are often difficult on both parents and children, and doubly so when one parent is subsequently left to care for the child as a single-parent without the support of their partner. *See Dean v. Compton*, No. M1998-00052-COA-R3-CV, 2000 WL 329351 (Tenn. Ct. App. Mar. 30, 2000); *In re D.D.V.*, No. M2001-02282-COA-R3-JV, 2002 WL 225891 (Tenn. Ct. App. Feb. 14, 2002); *Kathryne B.F. v. Michael B.*, No. W2013-01757-COA-R3-CV, 2014 WL 992110 (Tenn. Ct. App. Mar. 13, 2014). Tennessee certainly has an interest in ensuring that accidental pregnancies are more likely to occur within a stable family unit bound by marriage.

Again, a court does not review a statute's wisdom or desirability but considers only whether it has a rational basis. And there is nothing *irrational* about limiting the institution of marriage to the purpose for which it was created, by embracing its traditional definition. To conclude otherwise is to impose one's own view of what a State *ought* to do on the subject of same-sex marriage. *See Bruning*, 455 F.3d at 867-68 ("Whatever our personal views regarding this political and sociological debate, we cannot conclude that the State's justification 'lacks a rational relationship to legitimate state interest.'") (internal quotations omitted). "This case is not about how the debate about [same-sex marriage] should be resolved. It is about who may resolve it." *BAMN*, 2014 WL 1577512, at *17. Marriage is the province of the individual states, and in 2006 Tennessee voters resolved the debate for Tennessee.

II. THE DISTRICT COURT ABUSED ITS DISCRETION IN FINDING THAT PLAINTIFFS WOULD SUFFER IRREPARABLE HARM ABSENT A PRELIMINARY INJUNCTION.

The District Court abused its discretion when evaluating the second factor for preliminary injunction and determining that the harm alleged by Plaintiffs was irreparable. The second factor for preliminary injunctive relief requires a district court to determine whether the movants will suffer irreparable harm in the absence of an injunction. "The basis of injunctive relief in the federal courts has always been irreparable harm and inadequacy of legal remedies." *Sampson v. Murray*,

415 U.S. 61, 88 (1974) (quoting *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 506-7 (1959)).

> This Court has never held that a preliminary injunction may be granted without any showing that the plaintiff would suffer irreparable injury without such relief. Despite the overall flexibility of the test for preliminary injunctive relief, and the discretion vested in the district court, equity has traditionally required such irreparable harm before an interlocutory injunction may be issued.

Friendship Materials, Inc. v. Mich. Brick, Inc., 679 F.2d 100, 102-03 (6th Cir. 1982) (citations omitted).

The District Court based its finding that Plaintiffs will suffer irreparable harm absent preliminary injunctive relief upon the alleged "loss of a constitutional right" and "dignitary and practical harms." (RE # 67, p. 15, Memorandum). It ruled that "[b]ecause the Court has found that the plaintiffs are likely to prevail on their claims that the Anti-Recognition Laws are unconstitutional, it [is] axiomatic that the continued enforcement of those laws will cause them to suffer irreparable harm." (RE # 67, p. 15, Memorandum). It must also, therefore, be axiomatic that if the District Court was wrong to find that Plaintiffs are likely to prevail, the District Court was also wrong to find that they will suffer irreparable harm.

With regard to the District Court's finding of "dignitary and practical harms," the District Court abused its discretion in finding that these alleged speculative harms were irreparable. To establish irreparable injury, each and every plaintiff must show that they "will suffer 'actual and imminent' harm rather than

harm that is speculative or unsubstantiated." *Abney v. Amgen, Inc.*, 443 F.3d 540, 552 (6th Cir. 2006). Injunctive relief should not issue to address a threat of injury that is conjectural or hypothetical and based upon subjective fears about possible future adverse action. *Moncier v. Jones*, 939 F. Supp.2d 854, 859 (M.D. Tenn. 2013) (citing *Preiser v. Newkirk*, 422 U.S. 395, 403 (1975)). Injunctive relief is not available unless some real possibility of injury is impending or threatened and can be averted only by protective extraordinary process. *Willett v. Wells*, 469 F.Supp. 748, 753 (E.D. Tenn. 1977), *aff'd* 595 F.2d 1227 (6th Cir. 1979).

The Supreme Court has demarcated certain types of injuries that are insufficient to constitute irreparable injury warranting injunctive relief. Monetary damages alone are insufficient. *Sampson*, 415 U.S. at 90 (holding that "[m]ere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough."). Similarly, reputational damage "falls far short of the type of irreparable injury which is a necessary predicate to issuance of a temporary injunction." *Sampson*, 415 U.S. at 91-92. "The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of the litigation, weighs heavily against a claim of irreparable harm." *Id*. at 90 (quoting *Va. Petroleum Jobbers Ass'n v. Fed. Power Comm'n*, 259 F.2d 921, 925 (D.C. Cir. 1958)).

The District Court found that Tennessee's Marriage Laws "de-legitimizes [Plaintiffs'] relationships, degrades them in their interactions with the state, causes them to suffer public indignity, and invites public and private discrimination." (RE # 67, p. 15, Memorandum). But this alleged harm is properly characterized as reputational, which "falls far short of the type of irreparable injury which is a necessary predicate to issuance of a temporary injunction." *Sampson*, 415 U.S. at 88, 91-92. Even so, Plaintiffs have lived in Tennessee under the legal framework of Tennessee's Marriage Laws for more than a year. Clearly, the alleged reputational harm is not "imminent," even if Plaintiffs find it unsatisfactory.

The District Court also found that "the plaintiffs are deprived of some state protections, or at least the certainty that the same rights afforded to heterosexual marriages will be afforded to them." (RE # 67, p. 16, Memorandum). But the District Court noted that the Plaintiffs "could secure some of these rights by contract." (RE # 67, p. 16, Memorandum). While the District Court found that requiring Plaintiffs to avail themselves of these legal safeguards would be "time-consuming" and "expensive," even inconvenient remedies militate heavily against a finding of irreparability. (RE # 67, p. 16, Memorandum). *See Gilley v. United States*, 649 F.2d 449, 455 (6th Cir. 1981) (holding that the district court was "clearly correct" to find that personal inconveniences and disruption to family life did not constitute irreparable harm). Further, these harms were certainly not

imminent. The District Court relied upon the Plaintiffs' alleged uncertainty regarding their "ownership of a home as tenants by the entirety." (RE # 67, p. 16, Memorandum). Whether an occasion will arise to question the deeds' efficacy or any other possible martial property issue is speculative at best, and certainly does not constitute imminent and irreparable harm.

The District Court specifically emphasized Plaintiffs Tanco and Jesty's then-impending childbirth, finding the possibility of complications associated with birth compelling. (RE # 67, p. 16, Memorandum). But this concern was insufficient to grant injunctive relief; the District Court had no evidence or allegations before it to show even a likelihood of complications. The alleged harm in this instance was neither actual nor imminent—it was speculative. *See Abney v. Amgen, Inc.*, 443 F.3d 540, 552 (6th Cir. 2006).[16]

III. THE DISTRICT COURT ABUSED ITS DISCRETION IN DETERMINING THAT THE BALANCE OF HARM TO THE STATE AND THE PUBLIC INTEREST WEIGHED IN FAVOR OF GRANTING PRELIMINARY INJUNCTIVE RELIEF.

The District Court evaluated the remaining two factors, the balance of harm to the state and the public interest, based solely upon its finding that Tennessee's Marriage Laws are likely unconstitutional. (RE # 67, pp. 17-18). It ruled that

[16] Plaintiffs' child was born on March 27, 2014, and there is no indication that any of the District Court's concerns were realized. (Doc. # 26-9, Declaration of Valeria Tanco).

there can be no harm to the Defendants because the State "has no valid interest in enforcing an unconstitutional policy." (RE # 67, p. 17, Memorandum). The District Court's finding regarding the public interest followed similarly, stating that "[t]he public interest is promoted by the robust enforcement of constitutional rights." (RE # 67, p. 18, Memorandum). But as discussed above, the District Court erred in finding that Tennessee's Marriage Laws are likely unconstitutional. Notably, the District Court *minimized* the State's interest in enforcing its public-policy determinations.

Generally, the public interest favors federal courts denying extraordinary injunctive relief that may affect state domestic policy or the good-faith functioning of state officials. *See generally Ala. Pub. Serv. Comm'n v. S. Ry. Co.*, 341 U.S. 341, 351 (1951) (finding that "[i]t is in the public interest that federal courts of equity should exercise their discretionary power to grant or withhold relief so as to avoid needless obstruction of the domestic policy of the states").

> Caution and reluctance there must be in special measure where relief, if granted, is an interference by the process of injunction with the activities of state officers discharging in good faith their supposed official duties. In such circumstances this court has said that an injunction ought not to issue "unless in a case reasonably free from doubt." *Mass. State Grange v. Benton*, 272 U.S. 525, 527 (1926).

Hawks v. Hamill, 288 U.S. 52, 60 (1933). As members of the Supreme Court have recently noted, "any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable

injury." *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 571 U.S. __, 2013 WL 6080269, slip op. at *1 (Nov. 19, 2013) (Scalia, J., concurring in denial of application to vacate stay of an injunction) (quoting *Maryland v. King*, 567 U.S. 1, 3 (2012) (Roberts, C.J., in chambers)).

Because the District Court erred in determining that Tennessee's Marriage Laws were likely unconstitutional, it wrongly discounted the irreparable harm that an injunction would cause to the State's interests and thus abused its discretion in granting preliminary injunctive relief.

CONCLUSION

For the reasons stated, the District Court's order granting preliminary injunctive relief should be reversed.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2014, a copy of the foregoing brief was filed electronically. Notice of this filing will be sent by operation of the court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the court's electronic filing system.

/s/ Martha A. Campbell
Martha A. Campbell

CERTIFICATE OF COMPLIANCE

I certify that this brief is in compliance with Fed. R. App. P. 32(a)(7)(C). The number of words this brief contains is 10,199, which is less than the maximum permitted by Fed. R. App. P. 32(a)(7)(B)(i).

/s/Martha A. Campbell
Martha A. Campbell

DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

10/21/2013	1	COMPLAINT against all Defendants (Filing fee $400, paid), filed by Valeria Tanco. (Attachments: # 1 Civil Cover Sheet)(la) (Entered: 10/21/2013) (Page ID#: 1)
11/15/2013	27	ANSWER to 1 Complaint by Robert Cooper, Bill Gibbons, William Edward (Bill) Haslam, Larry Martin.(Campbell, Martha) (Entered: 11/15/2013) (Page ID#: 94)
11/19/2013	29	MOTION for Preliminary Injunction by Ijpe DeKoe, Vanessa DeVillez, Johno Espejo, Sophy Jesty, Thomas Kostura, Matthew Mansell, Kellie Miller, Valeria Tanco. (Harbison, William) (Entered: 11/19/2013) (Page ID#: 114)
11/19/2013	30	MEMORANDUM in Support of 29 MOTION for Preliminary Injunction filed by Ijpe DeKoe, Vanessa DeVillez, Johno Espejo, Sophy Jesty, Thomas Kostura, Matthew Mansell, Kellie Miller, Valeria Tanco . (Harbison, William) (Entered: 11/19/2013) (Page ID#: 118)
11/19/2013	31	APPENDIX filed by Ijpe DeKoe, Vanessa DeVillez, Johno Espejo, Sophy Jesty, Thomas Kostura, Matthew Mansell, Kellie Miller, Valeria Tanco re 30 Memorandum in Support. (Attachments: # 1 Attachment Obergefell v. Kasich, # 2 Attachment Garden State Equality v. Dow, # 3 Attachment Jones v. Hamilton Cnty Gov't, Tenn., # 4 Attachment In re Lenherr's Estate, # 5 Attachment Kerrigan v. Comm'r of Pub. Health, # 6 Attachment Varnum v. Brien, # 7 Attachment Dean v. District of Columbia)(Harbison, William) (Entered: 11/19/2013) (Page ID#: 166)
11/19/2013	32	NOTICE of Filing by Ijpe DeKoe, Vanessa DeVillez, Johno Espejo, Sophy Jesty, Thomas Kostura, Matthew Mansell, Kellie Miller, Valeria Tanco re 29 MOTION for Preliminary Injunction (Attachments: # 1 Attachment Declaration of Valeria Tanco, # 2 Attachment Declaration

		of Sophy Jesty, # 3 Exhibit A to Declaration of Sophy Jesty, # 4 Exhibit B to Declaration of Sophy Jesty, # 5 Exhibit C to Declaration of Sophy Jesty, # 6 Exhibit D to Declaration of Sophy Jesty, # 7 Exhibit E to Declaration of Sophy Jesty, # 8 Attachment Declaration of Ijpe Dekoe, # 9 Attachment Declaration of Thomas Kostura, # 10 Attachment Declaration of Kellie Miller-Devillez, # 11 Exhibit A to Declaration of Kellie Miller-Devillez, # 12 Exhibit B to Declaration of Kellie Miller-Devillez, # 13 Exhibit C to Declaration of Kellie Miller-Devillez, # 14 Attachment Declaration of Vanessa Miller-Devillez, # 15 Attachment Declaration of Johno Espejo, # 16 Attachment Declaration of Matthew Mansell)(Harbison, William) (Entered: 11/19/2013) (Page ID#: 383)
12/06/2013	35	RESPONSE in Opposition re 29 MOTION for Preliminary Injunction filed by Robert Cooper, Bill Gibbons, William Edward (Bill) Haslam, Larry Martin. (Campbell, Martha) (Entered: 12/06/2013) (Page ID#: 496)
12/06/2013	36	APPENDIX filed by All Defendants re 35 Response in Opposition to Motion. (Attachments: # 1 Attachment 1. Walker v. Mississippi, # 2 Attachment 2. Obergefell v. Kasich, # 3 Attachment 3. Andersen v. King County, # 4 Attachment 4. Donaldson v. State, # 5 Attachment 5. Planned Parenthood of Greater Texas Surgical Health Services v. Abbott)(Campbell, Martha) (Entered: 12/06/2013) (Page ID#: 524)
12/06/2013	37	NOTICE of Filing by Robert Cooper, Bill Gibbons, William Edward (Bill) Haslam, Larry Martin re 35 Response in Opposition to Motion *Declaration of Mark Goins and Affidavit of Connie Walden* (Attachments: # 1 Attachment Goins Declaration and Exhibit A, # 2 Attachment Walden Affidavit and Exhibits A & B)(Campbell, Martha) (Entered: 12/06/2013) (Page ID#: 713)
12/09/2013	41	MOTION for Leave to File Amicus Brief by Family Action Council of Tennessee. (Attachments: # 1 Attachment Proposed Amicus Curiae Brief of Family

		Action Council of Tennessee)(Scruggs, Jonathan) Modified Text on 12/10/2013 (dt). (Entered: 12/09/2013) (Page ID#: 736)
12/11/2013	42	ORDER granting 41 Motion for Leave to Amicus Brief. Signed by District Judge Aleta A. Trauger on 12/10/2013. (DOCKET TEXT SUMMARY ONLY-ATTORNEYS MUST OPEN THE PDF AND READ THE ORDER.)(hb) (Entered: 12/11/2013) (Page ID#: 764)
12/11/2013	43	AMICUS BRIEF filed by Family Action Council of Tennessee re 35 Response in Opposition to Motion for Preliminary Injunction. (hb) Modified text on 12/11/2013 (hb). (Entered: 12/11/2013) (Page ID#: 765)
12/20/2013	46	REPLY to Response to Motion re 29 MOTION for Preliminary Injunction filed by Ijpe DeKoe, Vanessa DeVillez, Johno Espejo, Sophy Jesty, Thomas Kostura, Matthew Mansell, Kellie Miller, Valeria Tanco. (Hickman, Scott) (Entered: 12/20/2013) (Page ID#: 792)
12/20/2013	47	APPENDIX filed by All Plaintiffs re 46 Reply to Response to Motion. (Attachments: # 1 Attachment 1996 Tenn Pub Acts 1031, # 2 Attachment Lindsley v Lindsley, # 3 Attachment Bowser v Bowser, # 4 Attachment Stoner v Stoner, # 5 Attachment Payne v Payne, # 6 Attachment Ochalek v Richmond, # 7 Attachment Baker v Nelson, # 8 Attachment Brief of Bipartisan LAG in Windsor, # 9 Attachment Varnum v Brien, # 10 Attachment In re Marriage Cases, # 11 Attachment Hight v Cox, # 12 Attachment Simpkins v CCA)(Hickman, Scott) (Entered: 12/20/2013) (Page ID#: 820)
12/24/2013	48	NOTICE of Filing by Ijpe DeKoe, Vanessa DeVillez, Johno Espejo, Sophy Jesty, Thomas Kostura, Matthew Mansell, Kellie Miller, Valeria Tanco re 29 MOTION for Preliminary Injunction *Notice of Supplemental Authority* (Attachments: # 1 Attachment Obergefell v Wymyslo 13cv00501 SD Ohio Final Order Granting Relief and Injunction, # 2 Attachment Kitchen v Herbert 13-cv-00217 CD Utah Mem Dec and Order)(Hickman, Scott) (Entered:

		12/24/2013) (Page ID#: 1038)
02/12/2014	55	NOTICE by Ijpe DeKoe, Vanessa DeVillez, Johno Espejo, Sophy Jesty, Thomas Kostura, Matthew Mansell, Kellie Miller, Valeria Tanco re 29 MOTION for Preliminary Injunction *Notice of Supplemental Authority* (Attachments: # 1 Attachment Memorandum Opinion in Bourke v. Beshear, # 2 Attachment Order in Bourke v. Beshear)(Orr, Asaf) (Entered: 02/12/2014) (Page ID#: 1253)
02/14/2014	56	NOTICE by Ijpe DeKoe, Vanessa DeVillez, Johno Espejo, Sophy Jesty, Thomas Kostura, Matthew Mansell, Kellie Miller, Valeria Tanco re 29 MOTION for Preliminary Injunction *Notice of Supplemental Authority* (Attachments: # 1 Attachment Opinion and Order in Bostic v. Rainey)(Orr, Asaf) (Entered: 02/14/2014) (Page ID#: 1281)
02/27/2014	58	NOTICE by Ijpe DeKoe, Vanessa DeVillez, Johno Espejo, Sophy Jesty, Thomas Kostura, Matthew Mansell, Kellie Miller, Valeria Tanco re 29 MOTION for Preliminary Injunction *Notice of Supplemental Authority* (Attachments: # 1 Attachment Order Granting Plaintiffs' Motion for Preliminary Injunction in DeLeon v. Perry)(Orr, Asaf) (Entered: 02/27/2014) (Page ID#: 1341)
03/10/2014	59	STIPULATION of Dismissal *of Plaintiffs Kellie Miller and Vanessa DeVillez and Defendant Bill Gibbons* by Ijpe DeKoe, Vanessa DeVillez, Johno Espejo, Sophy Jesty, Thomas Kostura, Matthew Mansell, Kellie Miller, Valeria Tanco, Larry Martin, William Edward (Bill) Haslam and Bill Gibbons. (Hickman, Scott) Modified Text on 3/10/2014 (dt). (Entered: 03/10/2014) (Page ID#: 1393)
03/14/2014	67	MEMORANDUM. Signed by District Judge Aleta A. Trauger on 3/14/14. (xc:Pro se party by regular and certified mail.)(DOCKET TEXT SUMMARY ONLY-ATTORNEYS MUST OPEN THE PDF AND READ THE ORDER.)(dt) (Entered: 03/14/2014) (Page ID#: 1415)
03/14/2014	68	ORDER: For the reasons set forth in the accompanying

		Memorandum, the plaintiffs' Motion for Preliminary Injunction 29 is hereby GRANTED. The plaintiffs did not submit a proposed preliminary injunction order for the court's consideration. Therefore, the court has prepared and hereby ISSUES the accompanying Preliminary Injunction, which tracks the language of the relief requested in the plaintiffs' motion itself. (See Docket No. 29 at p. 3.) If either side believes that the language of the injunction should be modified, it may a file a motion for the courts consideration. Signed by District Judge Aleta A. Trauger on 3/14/14. (dt) (Entered: 03/14/2014) (Page ID#: 1435)
03/14/2014	69	PRELIMINARY INJUNCTION. Signed by District Judge Aleta A. Trauger on 3/14/14. (DOCKET TEXT SUMMARY ONLY-ATTORNEYS MUST OPEN THE PDF AND READ THE ORDER.)(dt) (Entered: 03/14/2014) (Page ID#: 1436)
03/18/2014	72	MOTION to Stay re 69 Preliminary Injunction, 67 Memorandum Opinion of the Court, 68 Order on Motion for Preliminary Injunction,, *Pending Appeal* by Robert Cooper, William Edward (Bill) Haslam, Larry Martin. (Campbell, Martha) (Entered: 03/18/2014) (Page ID#: 1439)
03/18/2014	73	MEMORANDUM in Support of 72 MOTION to Stay re 69 Preliminary Injunction, 67 Memorandum Opinion of the Court, 68 Order on Motion for Preliminary Injunction,, *Pending Appeal* filed by Robert Cooper, William Edward (Bill) Haslam, Larry Martin . (Attachments: # 1 Attachment Herbert v. Kitchen order, # 2 Attachment Bishop v. Holder order)(Campbell, Martha) (Entered: 03/18/2014) (Page ID#: 1442)
03/18/2014	74	NOTICE OF APPEAL as to 69 Preliminary Injunction, 67 Memorandum Opinion of the Court, 68 Order on Motion for Preliminary Injunction,, by Robert Cooper, William Edward (Bill) Haslam, Larry Martin. (Campbell, Martha) (Entered: 03/18/2014) (Page ID#: 1517)

03/19/2014	77	RESPONSE in Opposition re 72 MOTION to Stay re 69 Preliminary Injunction, 67 Memorandum Opinion of the Court, 68 Order on Motion for Preliminary Injunction,, *Pending Appeal* filed by Ijpe DeKoe, Johno Espejo, Sophy Jesty, Thomas Kostura, Matthew Mansell, Valeria Tanco. (Hickman, Scott) (Entered: 03/19/2014) (Page ID#: 1521)
03/20/2014	78	MEMORANDUM & ORDER: Therefore, for the reasons stated herein, the Motion to Stay is hereby DENIED. It is so ORDERED. Signed by District Judge Aleta A. Trauger on 3/20/14. (DOCKET TEXT SUMMARY ONLY-ATTORNEYS MUST OPEN THE PDF AND READ THE ORDER.)(tmw) (Entered: 03/20/2014) (Page ID#: 1531)
04/25/2014	79	ORDER of USCA: Defendants' motion to stay the district court's order is GRANTED, and this case shall be assigned to a merits panel without delay.(dt) (Entered: 04/25/2014) (Page ID#: 1540)